

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”) and Novelty, Inc. (“Novelty”), with Novelty and CAPA each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction and General Allegations.

1.2.1 CAPA is a not-for profit corporation duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 Novelty employs ten or more persons, and CAPA alleges that Novelty is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 CAPA alleges that Novelty imported, sold, and/or distributed for sale in California, products containing Di-(2-ethylhexyl) phthalate (“DEHP”), a listed chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and CAPA alleges that Novelty failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its novelty products, specifically the Light Up Emojeez Cable and the Retractable ID Badge.

1.3 Product Description.

The products covered by this Settlement Agreement are the Light Up Emojeez Cable and the Retractable ID Badge, which are imported, sold and/or distributed for sale in California by Novelty with UPC Nos. 7 94080 21181 3 and 7 94080 27057. (“Covered Products”).

1.4 **60 Day Notices of Violation and Exchange of Information.**

On July 21, 2017 and July 31, 2017, CAPA served Novelty, Dollar King, and the requisite public enforcement agencies with two 60-Day Notices of Violation (“Notices”), one for the Light Up Emojeez Cable and one for the Retractable ID Badge, alleging that Novelty violated Proposition 65. The Notices alleged that Novelty and Dollar King had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided Novelty with test results in CAPA’s possession concerning its allegations. Novelty provided CAPA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 **No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”). Specifically, CAPA alleges that Novelty imported, sold or distributed for sale in the State of California the Covered Products, which contained DEHP without first providing the clear and reasonable exposure warning required by Proposition 65. Novelty denies CAPA’s allegations, including denying that Novelty imported, sold or distributed for sale in the State of California the Covered Products, and that such a warning is required under Proposition 65 or any otherwise applicable law.

Novelty further denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it allegedly has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Novelty of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Novelty of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Novelty.

However, this section shall not diminish or otherwise affect Novelty's obligations, responsibilities, and duties hereunder.

1.6 **Effective Date.**


For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 31, 2017.

2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

2.1 **Reformulation Standard.** Commencing 60 days from the Effective Date, and continuing thereafter, any Covered Products that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP if they meet the standard of a "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.2 **Warning Option.** Covered Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped out to consumers, retailers, or distributors in California after 60 days from the Effective Date. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of sixty days after the Effective Date.

2.3 **Warning Language.** Where required to meet the criteria set forth in Section 2.3, Defendant shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when Novelty distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, Novelty shall provide the following warning statement with the unit conspicuously on the package.

 **WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate (DEHP), which are known to the State of California to

cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

2.4 **Accessible Component.** The term “Accessible Component” shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

3. **CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

Novelty shall pay a civil penalty of \$3,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to CAPA. Novelty shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in the amount of \$2250.00, representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the amount of \$750, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to CAPA, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered on or before the Effective Date, to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Sepulveda, Blvd. Suite 2222
El Segundo, CA 90245

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution

of this agreement. More specifically, Novelty shall pay the total amount of \$21,000 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Novelty, and negotiating a settlement. Novelty shall make the check payable to “Kawahito Law Group APC” and shall deliver payment on or before the Effective Date to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. Novelty, Inc.
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

Or by wire transfer to the following account:

Kawahito Law Group APC
Client Trust Account
Account Number: 3250 8882 4857
Routing Number: 122000661/121000358 (paper/electronic transfer); 026009593 (wire)
Bank of America
4754 Admiralty Way
Marina Del Rey, CA 90292

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide Novelty with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days prior to payment.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases Novelty, of any violation of Proposition 65 that was or could have been asserted by CAPA against Novelty, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying Novelty with the Covered Products, and each entity to which Novelty directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents,

principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees, including but not limited to Dollar King (collectively “Releasees”) for any and all claims based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by Novelty (either directly or through the Releasees) in California before the Effective Date. This release is provided in CAPA’s individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Novelty and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys’ fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by Novelty or Releasees.

5.2 Novelty’s Release of CAPA.

Novelty on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, for any and all actions taken or statements made by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

5.3 Mutual Waiver of California Civil Code Section 1542.

The Parties each acknowledge that it is familiar with Section 1542 of the Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE

TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, each on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the extent it may lawfully waive such rights or benefits pertaining to the released matters, as defined by sections 5.1 and 5.2, above.

5.4 Enforcement of Settlement Agreement.

5.4.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 5.4.2 and 5.4.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

5.4.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Novelty by CAPA, unless CAPA notifies Novelty of the specific future acts alleged to constitute a breach of this Settlement Agreement at least 90 days before filing any action or upon receiving the notice Novelty fails to comply with the requirements set forth in Section 5.4.3 below. Any notice to Novelty must (a) identify with specificity the Covered Product including its SKU numbers or other identifying markers; (b) specific date(s) when the item was sold or offered for sale after the Effective Date in California without either reformulation or a Proposition 65 compliant warning; (c) the store or other place at which the product was available for sale; and (d) any other evidence or other support for the allegations.

5.4.3 Within 30 days of receiving the notice described in Section 5.4.2, Novelty shall either (1) withdraw the Covered Product from sale and remove it from inventory, (2) provide CAPA with evidence to refute the information provided under Section 5.4.2, or (3)

provide a Proposition 65 compliant warning for the Covered Product. Should the parties be unable to resolve the dispute, any party may seek relief under Section 5.4.1.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Novelty: Naki Margolis/Ana Tagvoryan
Blank Rome LLP
Attn. CAPA v. Novelty, Inc.
2020 Century Park East 6th Floor
Los Angeles, CA 90067

with a copy to: Todd Green
President
Novelty, Inc.
351 West Muskegon Dr.
Greenfield, IN 46140

For CAPA: James K. Kawahito
Kawahito Law Group APC
Attn. CAPA v. Novelty, Inc.
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

with a copy to:

Center for Advanced Public Awareness, Inc.
Attn: Linda Droubay
100 Promenade Circle, Suite 300
Sacramento, CA 95834

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

CAPA and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:


AGREED TO:

Date: _____

Date: 10/24/2017 _____

By: _____

Center for Public Awareness, Inc.

By:  _____

Novelty, Inc.

with a copy to:

Center for Advanced Public Awareness, Inc.
Attn: Linda Droubay
100 Promenade Circle, Suite 300
Sacramento, CA 95834

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

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12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 10/18/17

Date: _____

By: 
Center for Public Awareness, Inc.

By: _____
Novelty, Inc.